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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/707,526  | 12/19/2003  | Patrick C. Urschel   | A3-1700             | 1525             |
| 27127   | 7590        | 01/23/2006           | EXAMINER            |                  |
| HARTMAN & HARTMAN, P.C.<br>552 EAST 700 NORTH<br>VALPARAISO, IN 46383 |             |                      | CHOI, STEPHEN       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3724                |                  |
| DATE MAILED: 01/23/2006   |             |                      |                     |                  |

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/707,526  
Filing Date: December 19, 2003  
Appellant(s): URSCHER ET AL.

**MAILED**

**JAN 23 2006**

**Group 3700**

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Gary M. Hartman  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 07 November 2005 appealing from the Office action mailed 06 June 2005.



**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**



The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Leo (US 2,006,643).**

Leo discloses all the recited steps of the invention including:

- a) providing a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical (50);
- b) individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage (at 20) and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane (page 2, left col., lines 55-57 and right col., lines 13-23);
- c) contacting the food products and positioning the food products so that they free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free- fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape (page 1 left col., lines 34-37).

Regarding claims 6-7, only the outer peripheries of the food products contact the inner wall of the element 20 as they free-fall through the feed passage that are oriented substantially vertical.

**Claims 8-9, 14, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leo in view of Shadduck (US 2,572,770).**



Leo discloses the invention substantially as claimed except for a plurality of uniformly distributed resilient members extending radially inward into the feed passage toward a central axis. Shadduck discloses a plurality of uniformly distributed resilient members (36) extending radially inward into the feed passage for centering the food products. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ resilient members as taught by Shadduck on the device of Leo in order to center the food products within a casing having a cross section size larger than a cross section size of the food products so as to produce substantially uniform sized pieces.

#### **(10) Response to Argument**

Regarding the rejections under 35 USC § 102(b), appellants contend that Leo teaches the material being extruded through the cutting means instead of free-falling through the cutting means entirely under the force of gravity and the limitation "free-fall through the cutting means" is not within the ordinary meaning of the term "extrude". Thus, Leo does not disclose the limitation "causing the food products to ... free-fall through the cutting means entirely under the force of gravity". Appellants further contend that Leo teaches only limited portion of a material through a screen during any given operating cycle.

The examiner respectfully disagrees. Leo clearly teaches, on page 2, left column, lines 55-57 and right column, lines 13-23, that the material can fall by gravity or by a plunger onto the plate and can be diced by a die 50. The material is extruded through the cutting means and diced prior to reaching the plate. In addition, the



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definition of the term "extrude" according to Merriam-Webster dictionary is 1. to force, press, or push out or 2. to shape (as metal or plastic) by forcing through a die. This clearly teaches that the material is forced (extruded) through the die entirely under the force of gravity when the plunger (24) is not used. Such teachings satisfy the limitation "free-fall through the cutting means entirely under the force of gravity" set forth in claims 1 and 14. Furthermore, appellants are correct indicating only limited portion of the material through the cutting means during any given operating cycle, however, the entire product will eventually free-fall through the cutting means entirely under the force of gravity. The claimed process does not preclude having intermediate or additional steps such as, steps of diced limited portion of the material being stopped onto a plate before slicing operation commences at the same time and slicing operation of the diced material.

Regarding the rejections under 35 USC § 103, appellants contend that Shadduck does not provide any motivation to modify Leo's apparatus since Leo already teaches the apparatus capable of producing slices of uniform size and thickness and the combination of Leo and Shadduck does not teach a step of "resilient members causing the food products to free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means".

The examiner respectfully disagrees. Leo teaches the material being molded in the receptacle or being inserted therein. Shadduck teaches an apparatus having resilient members for centering products having the cross-section size smaller than that



of the receptacle so as to produce uniform size slices. It is the examiner's position that one of ordinary skill in the art with the teachings of Shadduck would have been clearly motivated to incorporate resilient members on the device of Leo in order to center the material having the cross-section size smaller than that of the receptacle so as to produce uniform cubes or blocks. Thus, the combination of Shadduck and Leo does teach the limitation "resilient members causing the food products to free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means".

**(11) Related Proceeding(s) Appendix**


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.




For the above reasons, it is believed that the rejections should be sustained.

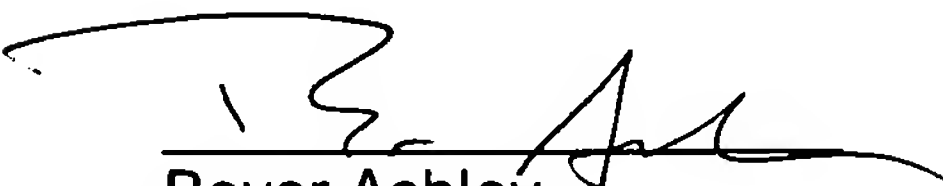
Respectfully submitted,

sc

  
**STEPHEN CHOI**  
**PRIMARY EXAMINER**

Conferees:

  
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Allan Shoap

  
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Boyer Ashley